

1 HONORABLE ROSANNA MALOUF PETERSON  
2

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11

12 IN UNITED STATES DISTRICT COURT  
13 FOR THE EASTERN DISTRICT OF WASHINGTON  
14

15 QUANAH M. SPENCER,  
16

17 Plaintiff,

18 vs.

19 CITY OF SPOKANE, a municipal  
20 corporation in and for the State of  
21 Washington; GREGORY PAUL  
22 LEBSOCK, in his individual and official  
23 capacities; SPOKANE COUNTY, a  
24 municipal corporation and political  
25 subdivision of the State of Washington;  
26 and CASEY A. EVANS, in his  
27 individual and official capacities,  
28

29 Defendants.  
30

Case No. 2:19-cv-00100-RMP

DEFENDANTS' LCivR  
56(c)(1)(C)REPLY  
STATEMENT OF MATERIAL  
FACTS

Defendants CITY OF SPOKANE and GREGORY PAUL LEBSOCK  
("Defendants") hereby submit the following statement of facts pursuant to LCivR  
56.1(c).

REPLY STATEMENT OF MATERIAL FACTS - page 1

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Defendants' Initial Facts	Plaintiff's Response
18. On September 20, 2017, Mr. Kandratowicz sent 2 Gwen Spencer an email with a copy of Judge Moreno's 3 Purported Order that was dated September 15, 2017. <i>See</i> 4 <i>Declaration of Gregory Lebsack in Support of</i> 5 <i>Defendants' Motion for Summary Judgment</i> , ECF 0028.	<b>Undisputed.</b>
6 19. On September 21, 2017, Mr. Kandratowicz emailed 7 Gwen Spencer a purported letter from Digital Foresnsic 8 Corp. The letter included alleged authentication results 9 regarding the alleged fraudulent call to STCU. <i>Id.</i> On 10 September 26, 2017, Mr. Kandratowicz told the 11 Spencers that Crystal Balcom was the fraudulent caller. 12 Ms. Balcom was an employee of PYK. <i>See Declaration</i> <i>of Gregory Lebsack in Support of Defendants' Motion</i> <i>for Summary Judgment</i> , ECF 0028.	<b>Undisputed.</b>
13 20. On October 17, 2017, Mrs. Norton spoke to Ms. 14 Heinen-Varner regarding the garnishment. Ms. Heinen- 15 Varner stated that BNSF had received the Purported 16 Order. Ms. Norton requested a copy, which Ms. Heinen- 17 Varner agreed to fax. Ms. Norton told Ms. Heinen- 18 Varner that there was no such permanent injunction filed 19 with the court. <i>See Declaration of Gregory Lebsack in</i> <i>Support of Defendants' Motion for Summary Judgment</i> , ECF 0028.	<b>Undisputed.</b>
20 33. On December 8, 2017, Det. Lebsack executed a 21 warrant on Chase Paymentech, LLC, regarding the 22 \$3.27 transaction used to pay for the fax of the Purported 23 Order. On December 19, 2017, Det. Lebsack received 24 the requested information. Det. Lebsack determined the 25 card was associated with Montana Federal Credit Union. 26 On December 19, 2017, Det. Lebsack performed a 27 database search that showed the Spencers phone had a 28 406 area code, natural to Montana, and that their home address was in Missoula. <i>See Declaration of Gregory</i> <i>Lebsack in Support of Defendants' Motion for Summary</i> <i>Judgment</i> , ECF 0028.	<b>Undisputed.</b>

1 2 3 4 5 34. On December 20, 2017, Crystal Balcom filed a complaint with the SPD. Ms. Balcom claimed that the Spencers had filed a false police report against her and PYK. She stated that the identity theft accusations against her and PYK were false. <i>See Declaration of Gregory Lebsock in Support of Defendants' Motion for Summary Judgment</i> , ECF 0028.	<b>Undisputed.</b>
6 7 8 9 10 11 35. On December 21, 2017, Det. Lebsock executed a search warrant on Montana Federal Credit Union regarding the Master Card used to purchase the fax of the Purported Order. Det. Lebsock received a bank statement regarding the Spencers' account, which reflected the purchase at the UPS Store on October 26, 2017. <i>See Declaration of Gregory Lebsock in Support of Defendants' Motion for Summary Judgment</i> , ECF 0028.	<b>Undisputed.</b>
12 13 14 15 16 17 18 37. On December 27, 2017, the Spencers, via letter, terminated Mr. Kandratowicz as their attorney. The Spencers stated they were unaware of the garnishment order issued by Judge Moreno on November 30, 2017, and were concerned Mr. Kandratowicz had been dishonest and fraudulent. <i>See Declaration of Gregory Lebsock in Support of Defendants' Motion for Summary Judgment</i> , ECF 0028.	<b>Undisputed.</b>
19 20 21 38. On December 28, 2017, the Spencers filed bar complaints against Mr. Kandratowicz. <i>See Declaration of Gregory Lebsock in Support of Defendants' Motion for Summary Judgment</i> , ECF 0028.	<b>Undisputed.</b>
22 23 24 25 26 48. On January 13, Det. Lebsock reviewed the police report filed by Crystal Balcom on December 20, 2017. Through his review, Det. Lebsock determined that Quanah Spencer faxed the Purported Order to BNSF on August 14, 2017. <i>See Declaration of Gregory Lebsock in Support of Defendants' Motion for Summary Judgment</i> , ECF 0028.	<b>Undisputed.</b>
27 28 29 57. On January 29, 2018, Det. Lebsock executed a search warrant on Mr. Kandratowicz's seized laptop. The same day, the SPD's Technical Assistance	<b>Undisputed.</b>

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1 Response Unit conducted a forensic analysis which 2 revealed over 300,000 images. From February 14, 2018 3 till February 15, 2018, Det. Lebsock reviewed the 4 documents. Of significance was page 2 of the Purported 5 Order dated July 28, 2017, and legal pleadings and 6 correspondence related to Q. Spencer Law, including 7 court orders and other pleadings stamped by the clerk of 8 the court. <i>See Declaration of Gregory Lebsock in 9 Support of Defendants' Motion for Summary Judgment,</i> 10 ECF 0028.	
11 58. On January 31, 2018, Det. Lebsock executed a 12 search warrant regarding Mr. Kandratowicz's Google 13 email account. <i>See Declaration of Gregory Lebsock in 14 Support of Defendants' Motion for Summary Judgment,</i> 15 ECF 0028.	<b>Undisputed.</b>
16 62. On February 26, 2018, the Spokane County 17 Prosecuting Attorney dismissed the forgery charge 18 against Mr. Spencer without prejudice. Charges have not 19 been filed against Gwen Spencer and have not been 20 refilled against Quanah Spencer. <i>See Declaration of 21 Gregory Lebsock in Support of Defendants' Motion for 22 Summary Judgment,</i> ECF 0028.	<b>Undisputed.</b>
22 64. On March 15, 2018, Det. Lebsock reviewed email 23 correspondence between the Spencers and Mr. 24 Kandratowicz. Det. Lebsock states that emails between 25 the Spencers and Mr. Kandratowicz "are deceptive 26 toward each other. Det. Lebsock further stated that:  <b>"Kandratowicz sent messages which were clearly not true as to his actions he was alleging to have taken in court, and his fabrication of Crystal Balcom as being the fraudulent caller to STCU. The Spencers are deceptive in their messages to Kandratowicz regarding, "...money being taken by a female impersonating Gwen."</b> <i>See Declaration of Gregory Lebsock in Support of Defendants' Motion for Summary Judgment,</i> ECF 0028.	<b>Undisputed.</b>

1       68. On January 25, 2019, Mr. Kandratowicz entered a  
2 guilty plea as to two counts of forgery and one count of  
3 second degree identity theft. *See Declaration of Gregory*  
4 *Lebsack in Support of Defendants' Motion for Summary*  
*Judgment*, ECF 0028.

## **DEFENDANTS' RESPONSE TO PLAINTIFF'S OBJECTIONS**

7 Defendants object to Plaintiff's statement of facts offered in opposition to  
8 Defendants' Motion for Summary Judgment. The vast majority of Plaintiff's facts  
9 are not framed as factual statements, but rather as argumentative assertions and  
10 conclusory statements without any evidentiary support. "The evidence presented  
11 by both the moving and non-moving parties must be admissible." *Newkirk v.*  
12 *ConAgra Foods, Inc.*, 727 F. Supp. 2d 1006, 1033 (E.D. Wash. 2010), *aff'd* 438  
13 Fed. Appx. 607 (9<sup>th</sup> Cir. 2011) citing Fed.R.Civ.P. 56(e). Furthermore, the court  
14 will not presume missing facts, and non-specific facts in affidavits are not  
15 sufficient to support or undermine a claim. *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S.  
16 871, 888-89, 110 S.Ct. 3177, 111 L.E.2d 695 (1990). "Conclusory statements  
17 without factual support are insufficient to defeat a motion for summary judgment."  
18  
19 *Surrell v. Cal. Water Serv. Co.*, 518 F.3d 1097, 1103 (9<sup>th</sup> Cir. 2008).

25 A number of the assertions made by Plaintiff are not material to Plaintiff's  
26 claims. The "alleged" facts cited by Plaintiff are not reasonably related to a 42  
27 U.S.C. § 1983 claim, but rather, a claim of negligence. "A genuine issue for trial  
28

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exists only if ‘the evidence is such that a reasonable jury could return a verdict’  
for the party opposing summary judgment.” *Anderson v. Liberty Lobby, Inc.*, 477  
U.S. 242, 255 (1986). In other words, issues of fact are not material and do not  
preclude summary judgment unless they “might affect the outcome of the suit  
under the governing law.” *Id.* There is no genuine issue for trial if the evidence  
favoring the non-movant is “merely colorable” or “not significantly probative.”  
*Id.* at 249. Further, the majority of Plaintiff’s assertions below are not supported  
by the record, but rely on inference and/or speculation. As a general assertion,  
Defendants are not responding to Mr. Spencer’s arguments and statements  
regarding hearsay, as these are not factual assertions but rather procedural  
arguments. As another general assertion, it is the responsibility of the Spokane  
County Prosecutor’s office as to whether charges are filed against a particular  
subject. As such, Defendants will not address arguments offered by Plaintiff  
claiming that Defendants had a responsibility to file charges against Mr.  
Kandratowicz.

#### QUALIFIED IMMUNITY

In his statement of facts, Mr. Spencer argues the need for additional  
discovery prior to responding. Det. Lebsock objects to Mr. Spencer’s “facts”  
related to the status of discovery. Further, as the Court is aware, Det. Lebsock has

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1 the right to have the decision on qualified immunity resolved at the earliest stage  
2 possible. By design, the issue of qualified immunity is usually resolved “long  
3 before trial.” *See Hunter v. Bryant*, 502 U.S. 224, 228, 112 S.Ct. 534, 116 L.Ed.2d  
4 589 (1991) (per curiam). The Supreme Court has repeatedly stressed the  
5 importance of deciding qualified immunity “at the earliest possible stage in  
6 litigation” in order to preserve the doctrine’s status as a true “*immunity from suit*  
7 rather than a mere defense to liability.” *See id.* at 227, 112 S.Ct. 534 (quoting  
8 *Mitchell v. Forsyth*, 472 U.S. 511, 526, 105 S.Ct. 2806, 86 L.Ed.2d 411 (1985)).  
9 Early determination is often possible “because qualified immunity most often  
10 turns on legal determinations, not disputed facts.” *Sloman v. Tadlock*, 21 F.3d  
11 1462, 1468 (9th Cir. 1994). In addition, courts are now empowered to address the  
12 two prongs in whichever order would expedite resolution of the case. *See Pearson*,  
13 555 U.S. at 236–39, 129 S.Ct. 808 (noting that it is frequently “quick[er] and  
14 easi[e]r” to determine whether a constitutional right was clearly established than  
15 whether it was violated), *overruling Saucier v. Katz*, 533 U.S. 194, 121 S.Ct. 2151,  
16 150 L.Ed.2d 272 (2001).

17 Qualified immunity is meant to “spare a defendant not only unwarranted  
18 liability, but unwarranted demands customarily imposed upon those defending a  
19 long drawn out lawsuit.” *Siegert v. Gilley*, 500 U.S. 226, 232 (1991). Qualified  
20

immunity is “an entitlement not to stand trial or face the other burdens of litigation,” *Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985), and one of its purposes “is to protect public officials from the ‘broad-ranging discovery’ that can be ‘peculiarly disruptive of effective government.’” *Anderson v. Creighton*, 483 U.S. 635, 646 n. 6 (1987) (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 817 (1982)). The Supreme Court has repeatedly explained that, when possible, discovery should be delayed until qualified immunity is resolved. *Harlow*, 457 U.S. at 818; *Mitchell*, 472 U.S. at 526 (recognizing that “even such pretrial matters as discovery are to be avoided if possible” before resolution of qualified immunity); *Crawford-El v. Britton*, 523 U .S. 574, 597–98 (1998) (“[T]he trial court must exercise its discretion [to limit discovery under Federal Rule of Civil Procedure 26(c) ] in a way that protects the substance of the qualified immunity defense ... so that officials are not subjected to unnecessary and burdensome discovery or trial proceedings.”).

## **PLAINTIFF'S STATEMENT OF FACTS AND DEFENDANTS'**

## RESPONSE

1. **Plaintiff's Fact #1:** Mediation was ordered in the underlying civil case in Spokane County Superior Court, and which is recorded in the case file for Spokane County Superior Court Case No. 15-2-03565-3, and this information was contained in the record at the time it was reviewed by Defendants, and this fact should have been noted. The opportunity to

**REPLY STATEMENT OF MATERIAL FACTS - page 8**

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1 participate in a court ordered mediation was never conveyed to the Spencers, and  
2 there is no record of any mediation taking place in the Superior Court record. ECF  
No. 33; ECF No. 34-1; ECF No. 34-8.

14       2.     **Plaintiff's Fact #2:** #2 - Defendants were motivated by bias in favor  
15 of former Spokane Police Department colleagues, and friends, Joseph and Marie  
16 Pence – each being defendants in the underlying civil matter prosecuted by  
17 Quanah and Gwen Spencer in Spokane County Superior Court Case No. 15-2-  
18 03565-3. ECF No. 34-1. Defendant Lebsock even got a puppy from the Pences,  
19 and Joseph Pence just happened to call Defendant Lebsock on January 23, 2018.  
ECF 28, 34.

21           **Defendants' Response:** Defendants object to Plaintiff's Statement of Fact  
22 No. 2 as irrelevant. ER 402. Whether or not Defendants acted with discriminatory  
23 or retaliatory intent is irrelevant in light of the judicial finding of probable cause.  
24 See, *Devenpeck v. Alford*, 543 U.S. 146, 153, 125 S.Ct. 588 (2004). Defendants  
25 dispute that they were motivated by bias in favor of former SPD officers Joseph  
26  
27 and Marie Pence. See ECF 0028, ¶ 34. Defendants  
28

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1 do not dispute the remainder of Plaintiff's Statement of Fact No. 2. This disputed  
 2 fact is not material to the Court's determination regarding Defendants' Motion for  
 3 Summary Judgment, as the existence of probable cause makes the officers' "state  
 4 of mind" and "subjective intent" immaterial.  
 5

6       **3. Plaintiff's Fact #3:** #3 - Aaron Kandratowicz was disbarred for  
 7 reasons unrelated to him forging the subject court order prior to pleading guilty  
 8 and being sentenced for the felony charges relating to a forged court order. ECF  
 9 No. 1-5. Defendant Spokane County and Defendant Evans failed to correct the  
 10 Spokane Superior Court at sentencing when the notion that Mr. Kandratowicz  
 11 would subsequently be disbarred was mistakenly stated and relied upon by the  
 12 Superior Court Judge. ECF No. 1-3. Defendant City of Spokane and Defendant  
 13 Lebsack possess, and have possessed, additional evidence of other crimes by Mr.  
 14 Kandratowicz, but have done nothing. ECF No. 33; ECF No. 1-1; ECF No. 34-12;  
 15 ECF No. 34-13. The blatant and obvious disparity between the treatment of  
 16 Plaintiff Spencer as compared to Mr. Kandratowicz is evidence of the  
 17 unconstitutional and unlawful conduct by Defendants causing harm and injury to  
 Plaintiff Spencer. *Id.*

18       **Defendants' Response:** Defendants object to Plaintiff's Statement of Fact  
 19 No. 3 as irrelevant. ER 402. Whether or not Defendants acted with discriminatory  
 20 or retaliatory intent is irrelevant in light of the judicial finding of probable cause.  
 21 See, *Devenpeck v. Alford*, 543 U.S. 146, 153, 125 S.Ct. 588 (2004). Plaintiff's  
 22 Statement of Fact No. 3 includes allegations towards Spokane County and  
 23 Defendant Casey Evans, who are not the answering Defendants. Defendants do  
 24 not dispute that Aaron Kandratowicz was disbarred for the reasons raised by Mr.  
 25 Spencer. Defendants dispute that Mr. Spencer was  
 26  
 27  
 28

1           disparately treated or that Det. Lebsock and the Answering Defendants engaged  
 2           in unconstitutional or unlawful conduct. *See* ECF 0026 at 6-18; ECF 0028, ¶ 16,  
 3           28-32. This disputed fact is not material to the Court's determination regarding  
 4           Defendants' Motion for Summary Judgment.

5           **4. Plaintiff's Fact #4:** #4 - The timing, chronology and internal  
 6           inconsistency in Defendant Lebsock's Declaration (ECF No. 28) shows his  
 7           conduct to be unreasonable, and him having a reckless and willful disregard for  
 8           the truth. By Defendant Lebsock's own admission he did not know about any  
 9           "relationship" Plaintiff Spencer had with Mr. Kandratowicz until after he caused,  
 10          along with the other Defendants, Plaintiff Spencer to be arrested and detained. He  
 11          did known that Mr. Kandratowicz was Plaintiff Spencer's attorney in relation to  
 12          the forged order on Mr. Kandratowicz's pleading paper. Defendant Lebsock's  
 13          Declaration shows that he did not know information that he tries to use as a basis  
 14          for his unreasonable conduct until after his unreasonable conduct had taken place.  
 15          ECF No. 1-1.

16           **Defendants' Response:** Defendants object to Plaintiff's Statement of Fact  
 17          No. 4 as irrelevant. ER 402. Defendants do not dispute that Det. Lebsock knew  
 18          that Mr. Kandratowicz was an attorney in relation to the Purported Order.  
 19          Defendants dispute that the chronology of Det. Lebsock's Declaration is  
 20          unreasonable and was developed with a reckless and willful disregard for the truth.  
 21          *See* ECF 0028, ¶ 26. This disputed fact is not material to the Court's determination  
 22          regarding Defendants' Motion for Summary Judgment.

23           **5. Plaintiff's Fact #5: #5** - The court file for Spokane County Superior  
 24          Court Case No. 15-2-03563-3 shows that a mediation was ordered by the Superior  
 25          Court, but it never took place. ECF No. 34-1. Said  
 26          court file also shows that Mr. Kandratowicz did not

1 appear at a show cause hearing on November 30, 2017, relating to the court order  
2 forged by Mr. Kandratowicz. ECF No. 29-6.

3           **Defendants' Response:** Defendants object to Plaintiff's Statement of Fact  
4 No. 5 as irrelevant. ER 402. Defendants do not dispute the facts provided in  
5 Plaintiff's Statement of Fact No. 5.

6           **6. Plaintiff's Fact #6:** #6 - Gwen Spencer did receive a phone call from  
7 Danielle Reid on July 3, 2017. ECF No. 28-4, pp. 9-10.

8           **Defendants' Response:** Defendants object to Plaintiff's Statement of Fact  
9 No. 6 as irrelevant. ER 402. Defendant's dispute, based on the documents cited in  
10 Plaintiff's Statement of Fact No. 6, that their statement "On July 3, 2017, Gwen  
11 Spencer claimed to receive a call from Spokane Teachers Credit Union," is  
12 accurate. This disputed fact is not material to the Court's determination regarding  
13 Defendants' Motion for Summary Judgment.

14           **7. Plaintiff's Fact #7:** #7-#16 - Defendant Lebsock recounts  
15 information that he did not receive until after he unconstitutionally and unlawfully  
16 caused harm and injury to Plaintiff Spencer, but presents it as though he had the  
17 information preceding his conduct that he alleges creates a reasonable basis for his  
18 conduct.

19           **Defendants' Response:** Defendants object to Plaintiff's Statement of Fact  
20 No. 7 as irrelevant. ER 402. Defendants dispute that the factual assertions  
21 contained in Defendants' Statement of Material Facts are presented as though Det.  
22 Lebsock possessed the information prior to the investigation and arrest of Quanah

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1 Spencer. *See* ECF 0028, ¶ 26. Defendants dispute that Det. Lebsock engaged in  
 2 unconstitutional or unlawful conduct towards Mr. Spencer. *See* ECF 0026 at 6-18;  
 3 ECF 0028, ¶ 16. This disputed fact is not material to the Court's determination  
 4 regarding Defendants' Motion for Summary Judgment  
 5

6       **8. Plaintiff's Fact #8:** #17 - Sapphire Strategies did not "tell" the  
 7 Spencers anything. Sapphire Strategies, Inc., refers to a company owned and  
 8 operated by Gwen Spencer. E.g., ECF No. 34-4, p. 11.  
 9

10      **Defendants' Response:** Defendants object to Plaintiff's Statement of Fact  
 11 No. 8 as irrelevant. ER 402. Defendants do not dispute the fact.  
 12

13      **9. Plaintiff's Fact # 9:** #21 - Officer House's "*official report*" is  
 14 contradicted by the written Declaration provided to him by Plaintiff Spencer prior  
 15 to him writing his report; thus, his "report" is directly contradicted by what was  
 16 actually given to him in writing. ECF No. 28-4. The best evidence of what was  
 17 told to Officer House is what was given to him in writing in the form of a  
 18 Declaration by Plaintiff Spencer. Id. Defendants acted unreasonably and  
 19 recklessly by failing to properly read and comprehend the contents of the  
 Declaration given to them by Plaintiff Spencer. Id.; ECF No. 33; ECF No. 1-1;  
 ECF No. 34.

20      **Defendants' Response:** Defendants object to Plaintiff's Statement of Fact  
 21 No. 9 as irrelevant. ER 402. Defendants dispute that they acted unreasonably and  
 23 recklessly by allegedly failing to properly read and comprehend the contents of  
 25 the Mr. Spencer's Declaration and that the best evidence provided to Officer  
 26 House was Mr. Spencer's Declaration. *See* ECF 0028, ¶ 16; ECF 0028-4. This  
 27  
 28

1 disputed fact is not material to the Court's determination regarding Defendants'  
2 Motion for Summary Judgment  
3

4       **10. Plaintiff's Fact # 10:** #22 - Plaintiff Spencer does not have a copy  
5 of the referenced recording of communication between Whitney Norton and Brandi  
6 Heinen-Varner. Any statements made by any person other than Defendant  
7 Lebsack, as contained in his Declaration, are hearsay and not admissible. FRE  
801, 802.

8           **Defendants' Response:** Defendants object to Plaintiff's Statement of Fact  
9  
10 No. 10 as irrelevant. ER 402. Defendants do not dispute that Mr. Spencer does not  
11 have a copy of the referenced recording.  
12

13       **11. Plaintiff's Fact # 11:** #23 - Plaintiff Spencer does not have a copy  
14 of the referenced recording. The referenced statements are hearsay, and not  
15 admissible. FRE 801, 802.

16           **Defendants' Response:** Defendants object to Plaintiff's Statement of Fact  
17  
18 No. 11 as irrelevant. ER 402. *See* Defendants' response to Plaintiff's Statement of  
19 Fact No. 10.  
20

21       **12. Plaintiff's Fact # 12:** #24 - The purported certification is not on a  
22 "detached page," and it is not unusual for a two-sided document to result in a  
23 separate page in the digitally scanned copy of the two-sided document, with the  
24 back-side of a two-sided page becoming a separate page in the scanned copy. ECF  
No. 34-13, pp. 27-31.

25           **Defendants' Response:** Defendants object to Plaintiff's Statement of Fact  
26  
27 No. 12 as irrelevant. ER 402. Defendants dispute that the certification is not on a  
28 detached page from the Purported Order and that it is not unusual for a two-sided  
29  
30

1 document to result in a separate page in the digitally scanned copy of the two-  
 2 sided document. *See* ECF 0028, ¶ 5, 9, 16.  
 3

4       **13. Plaintiff's Fact # 13:** #25 - The alleged evidence of the referenced  
 5 e-mail is hearsay, and not admissible in evidence. FRE 801, 802. Even if  
 6 considered, it is not actually an e-mail, but rather the narrative from the Spencers  
 7 provided to Defendants by Gwen Spencer under extreme duress while plaintiff  
 8 Spencer was unlawfully and unconstitutionally held in jail in Missoula County.  
 9 The communication referenced is from Paragraph 52 of Defendant Lebsock's  
 10 Declaration (ECF No. 28), and is apparently from a recording that has not been  
 11 provided to Plaintiff. The statements, as contained in Defendant Lebsock's  
 12 Declaration, are hearsay and not admissible evidence. FRE 801, 802.

13       **Defendants' Response:** Defendants object to Plaintiff's Statement of Fact  
 14 No. 13 as irrelevant. ER 402. Defendants do not dispute that the cited to evidence  
 15 is not actually an email or that Plaintiff does not possess the recording referenced  
 16 in Paragraph 52 of Det. Lebsock's Declaration. Defendants dispute that Mr.  
 17 Spencer was unlawfully and unconstitutionally held in Missoula County Jail. *See*  
 18 ECF 0026 at 14. This disputed fact is not material to the Court's determination  
 19 regarding Defendants' Motion for Summary Judgment.  
 20

21       **14. Plaintiff's Fact # 14:** #26 - The referenced filing by SAS Oregon  
 22 was biased, unfounded and filed in an adversarial process, and later set aside  
 23 because it was totally lacking for any support once exposed to even limited  
 24 scrutiny. Moreover, the referenced pleading is hearsay and cannot be considered.  
 25 FRE 801, 802. The false and self-serving statements referenced were made by the  
 26 opposing party and an opposing party's attorney in the adversarial process of the  
 27 underlying civil case. Any such statements are untrustworthy on their face, and  
 28 they totally fall apart under any scrutiny in the present case. ECF No. 1-1.

1                   **Defendants' Response:** Defendants object to Plaintiff's Statement  
 2 of Fact No. 14 as irrelevant. ER 402. Whether or not Defendants acted with  
 3 discriminatory or retaliatory intent is irrelevant in light of the judicial finding of  
 4 probable cause. See, *Devenpeck v. Alford*, 543 U.S. 146, 153, 125 S.Ct. 588  
 5 (2004). Defendants did not draft the aforementioned filing by SAS Oregon and  
 6 are therefore unaware of reasoning as to why it was drafted. Defendants do not  
 7 dispute that the aforementioned filing was later set aside, but are unaware as to the  
 8 reasons why.

13                 15. **Plaintiff's Fact #15:** #27 - ECF No. 29-6 has an obvious and  
 14 significant notation made by Judge Maryann Moreno that, "***Plaintiff counsel***  
 15 ***[Aaron Kandratowicz] did not appear for hearing on Nov. 30, 2017.***" Judge  
 16 Moreno also later, once the Spencers had new legal counsel, set aside the  
 17 referenced order because the findings of fact and conclusions of law were  
 18 erroneous and patently false when finally reviewed in a non-ex parte context. The  
 19 false statements were originally presented ex parte and totally prejudiced the  
 20 Spencers because Mr. Kandratowicz failed to appear, and the statements were  
 21 made by a party with reason to attack Plaintiff Spencer with bias and a lack of  
 22 fairness because they were adversaries in litigation. The referenced order exposes  
 23 the risks to fairness and justice when such matters are handled ex parte, and with  
 24 the Spencers having no notice or due process relating to the material presented to  
 25 the Spokane County Superior Court, or any notice or due process relating to the  
 26 actions of the Spokane County Superior Court.

27                 **Defendants' Response:** Defendants object to Plaintiff's Statement of Fact  
 28 No. 15 as irrelevant. ER 402. Defendants do not dispute that the findings in Judge  
 29 Moreno's Order dated December 1, 2017 were set aside at a later date or that Judge  
 30 Moreno's order provided that Aaron Kandratowicz

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1 did not appear at the November 30, 2017 hearing. Defendants did not draft the  
2 aforementioned filing by SAS Oregon and are therefore unaware of reasoning as  
3 to why it was drafted. Defendants are not addressing the remainder of Plaintiff's  
4 Statement of Fact No. 15 as it does not contain factual assertions and includes  
5 arguments and speculation as to ex parte proceedings.

6       **16. Plaintiff's Fact #16:** #28 - Superior Court Judge Maryann Moreno  
7 directly contradicted the report made by SPD Officer Craig Butler, and stated that  
8 the language used by Officer Butler described events that she says never happened.  
9 ECF No. 34-10. The referenced statements are hearsay and are not admissible  
10 evidence. FRE 801, 802.

11                   **Defendants' Response:** Defendants object to Plaintiff's Statement of Fact  
12 No. 16 as irrelevant. ER 402. Defendants do not dispute that Judge Moreno later  
13 contradicted the report made by SPD Officer Craig Butler.

14       **17. Plaintiff's Fact #17:** #29 - The facts surrounding Defendant  
15 Lebsock being assigned to investigate have not been provided to Plaintiff Spencer,  
16 and discovery on this matter is needed for a fair opportunity to respond. The  
17 assignment is also of particular concern because Defendant Lebsock is apparently  
18 a "Major Crimes" detective, and Mr. Kandratowicz ended up being handled with  
19 "kid gloves" by Defendants. Upon assignment, the most obvious and reasonable  
20 thing for Defendant Lebsock to do was to contact the attorney that failed to appear  
21 at the hearing on November 30, 2017, relating to the subject forged order – the  
22 attorney, Mr. Kandratowicz, that had his firm name ¶on the page, and was to have  
23 presented the order. Faxing a court document given to you by your attorney,  
24 accompanied by a history of false statements and fabrications made by such  
25 attorney in support of the document being genuine, is not a crime, and is not even  
26 an element of a crime. Defendants have evidence of criminal conduct perpetrated  
27 against the Spencers by Mr. Kandratowicz, yet they have done nothing with it.  
28 Defendants also have evidence of Mr.       *Evans, Craven & Lackie, P.S.*  
29

1 Kandratowicz stealing the identity of a person by the name of Igor Shorokhov, and  
 2 forging a related letter, but have done nothing with it. ECF No. 34-12.

3                   **Defendants' Response:** Defendants object to Plaintiff's Statement of Fact  
 4 No. 17 as irrelevant. ER 402. Whether or not Defendants acted with discriminatory  
 5 or retaliatory intent is irrelevant in light of the judicial finding of probable cause.  
 6 See, *Devenpeck v. Alford*, 543 U.S. 146, 153, 125 S.Ct. 588 (2004). Defendants  
 7 dispute that Mr. Kandratowicz was handled with "kids gloves," as opposed to Mr.  
 8 Spencer. *See* ECF 0028, ¶ 28-32. Defendants dispute that the "most obvious and  
 9 reasonable thing," for Det. Lebsock to do was to contact Mr. Kandratowicz. *See*  
 10 ECF 0028-6; ECF 0028, ¶ 16. Defendants dispute that submitting a forged court  
 11 document to an employer for the financial and legal benefit of the person  
 12 submitting the order is not an element of a crime. *Id.*

13                  18.    **Plaintiff's Fact #18:** #30 - The referenced statements of Rebecca  
 14 Berger are hearsay, and not admissible. FRE 801, 802. In any event, Ms. Berger's  
 15 alleged statements are apparently known only to Defendant Lebsock, and Plaintiff  
 16 has had no opportunity to receive sufficient answers and responses to the written  
 17 discovery propounded to Defendants, or to take any depositions to obtain sworn  
 18 testimony regarding the purported facts presented by Defendant Lebsock and  
 19 Defendant City of Spokane.

20                   **Defendants' Response:** Defendants object to Plaintiff's Statement of Fact  
 21 No. 18 as irrelevant. ER 402. Defendants do not dispute that Plaintiff has not  
 22 received evidence regarding Ms. Berger's statements, nor have they taken any  
 23 depositions to obtain sworn testimony regarding the

1 facts presented by Defendants. For the reasons set forth in Defendants' response  
 2 to Plaintiff's FRCP 56(d) motion, Defendants dispute Plaintiff's claimed need for  
 3 such discovery.

5       **19. Plaintiff's Fact #19:** #31 - In the civil case file for the underlying  
 6 civil case in Spokane County Superior Court with Case No. 15-2-03565-3, as of  
 7 December 8, 2017, were files and records inculpating Aaron Kandratowicz, and  
 8 exculpating Plaintiff Spencer. ECF No. 1-1; ECF No. 29-6, p. 8. A reasonable  
 9 detective, not set on targeting Plaintiff Spencer based on unlawful and  
 10 discriminatory bias, would have reviewed and known of the evidence in the subject  
 11 file inculpating Mr. Kandratowicz, and exculpating Plaintiff Spencer, as of  
 December 8, 2017.

12           **Defendants' Response:** Defendants object to Plaintiff's Statement of Fact  
 13 No. 19 as irrelevant. ER 402. Whether or not Defendants acted with discriminatory  
 14 or retaliatory intent is irrelevant in light of the judicial finding of probable cause.  
 15 See, *Devenpeck v. Alford*, 543 U.S. 146, 153, 125 S.Ct. 588 (2004). Defendants  
 16 dispute that the civil case file for Case No 15-2-03565-3 exculpates Mr. Spencer.  
 17 ECF 0028-6; ECF 0028, ¶ 16. Defendants dispute that Det. Lebsock acted  
 18 unlawfully or discriminatory or that he did not review and know the evidence in  
 19 the aforementioned civil case file. See ECF 0028, ¶ 10, 16. This disputed fact is  
 20 not material to the Court's determination regarding Defendants' Motion for  
 21 Summary Judgment.

22       **20. Plaintiff's Fact #20:** #32 - The referenced statements made by  
 23 Spokane County Superior Court Clerk Tim Fitzgerald are hearsay, and are not  
 24 admissible. FRE 801, 802. Moreover, Plaintiff

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1 Spencer has not received any material or information in discovery in this case, and  
 2 has not had the opportunity to take any depositions, to include of those persons  
 3 referenced in Defendants' present motions and related material.

4                   **Defendants' Response:** Defendants object to Plaintiff's Statement of Fact  
 5 No. 20 as irrelevant. ER 402. Defendants do not dispute that Plaintiff has not yet  
 6 received evidence pursuant to discovery regarding Ms. Berger's statements, nor  
 7 have they taken any depositions to obtain sworn testimony regarding the facts  
 8 presented by Defendants. For the reasons set forth in Defendants' response to  
 9 Plaintiff's FRCP 56(d) motion, Defendants dispute Plaintiff's claimed need for  
 10 such discovery.

11                  21. **Plaintiff's Fact #21:** #36 - Defendants are again relying on "e-mail"  
 12 that is actually just the contents of a narrative provided to Defendants by Gwen  
 13 Spencer while under extreme duress because Plaintiff Spencer was being  
 14 unlawfully held in jail in contravention of his constitutional rights – and after he  
 15 was supposed to be released by order of a Missoula County judge. This material  
 16 does show however, that Defendants were aware that it was Mr. Kandratowicz that  
 17 had likely committed criminal acts and not Plaintiff Spencer.

18                  **Defendants' Response:** Defendants object to Plaintiff's Statement of Fact  
 19 No. 21 as irrelevant. ER 402. Defendants do not dispute that the cited evidence is  
 20 not actually an email, but rather from a narrative drafted by Gwen and Quanah  
 21 Spencer or that the materials show that Mr. Kandratowicz likely committed  
 22 criminal acts. Defendants' dispute that Mr. Spencer was unlawfully and  
 23 unconstitutionally held in Missoula County Jail. *See* ECF 0026 at 14. This disputed  
 24

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fact is not material to the Court's determination regarding Defendants' Motion for Summary Judgment.

**22. Plaintiff's Fact #22:** #39 - Defendants knew, or should have known, prior to January 5, 2018, that Plaintiff Spencer was represented by new legal counsel, and that there was even further reason to investigate Mr. Kandratowicz, and that Plaintiff Spencer posed no risk whatsoever to fail to respond to reasonable contact from law enforcement – Plaintiff Spencer had a new attorney and Defendants knew it. ECF No. 1-1; ECF No. 34-3. Defendant Lebsack even received a business card from Plaintiff Spencer's new counsel on December 28, 2017. ECF No. 1-1.

The “*judgment*” against the Spencers was the result of Mr. Kandratowicz’s malpractice and criminal conduct. ECF No. 34-8. It was entered after SAS Oregon prevailed on a motion for summary judgment and received an award for prevailing party attorneys’ fees, with the Spencers never even having known about the motion for summary judgment against them, or the grant of summary judgment in favor of the defendants in the underlying civil case. The Spencers also had no notice or knowledge of the court-ordered mediation (which never happened to their extreme prejudice), or of an offer made by the defendants to settle prior to summary judgment, all because Mr. Kandratowicz did not inform the Spencers. Id.; ECF No. 33; ECF No. 34; ECF No. 34-8. This is why the fact that Mr. Kandratowicz failed to appear at the November 30, 2017, hearing as noted in Judge Moreno’s order from that date is so important if a person is acting reasonably – something Defendants here knew about, or should have known about if acting reasonably and without malice. ECF No. 29-6.

**Defendants’ Response:** Defendants object to Plaintiff’s Statement of Fact No. 22 as irrelevant. ER 402. Whether or not Defendants acted with discriminatory or retaliatory intent is irrelevant in light of the judicial finding of probable cause. See, *Devenpeck v. Alford*, 543 U.S. 146, 153, 125 S.Ct. 588 (2004). Defendants do not dispute that Det. Lebsack received a business card from Mr. Poole on December 28, 2017. Defendants do not dispute that

1 Mr. Kandratowicz failed to notify the Spencers about mediation and settlement  
 2 offers from SAS Oregon or that Mr. Kandratowicz did not appear at the November  
 3 30, 2017 hearing. Defendants are unaware as to the reasoning behind the June 27,  
 4 2017 judgment against the Spencers. Defendants dispute that they acted recklessly  
 5 and with malice or that they knew or should have known Mr. Spencer was  
 6 represented by new counsel. *See* ECF 0028-8 at Bate Stamp 000127. This disputed  
 7 fact is not material to the Court's determination regarding Defendants' Motion for  
 8 Summary Judgment.

13       **23. Plaintiff's Fact #23:** #40 - As stated above, Defendants knew or  
 14 should have known as of January 5, 2018, that Plaintiff Spencer had new legal  
 15 counsel in the underlying civil case. ECF No. 1-1; ECF No. 33. Moreover,  
 16 Spokane County Superior Court Judge Harold Clarke was presented with sworn,  
 17 false statements from Defendant Evans in his Certificate in support of the  
 18 application for the arrest warrant for Plaintiff Spencer. ECF No. 22-4. Defendant  
 19 Lebsock's statement that Judge Clarke took it upon himself to call and have  
 20 "someone" in Missoula County ignore the order of the Missoula County Judge  
 releasing Plaintiff Spencer is also of serious concern, and presents a need for  
 discovery. ECF No. 28, ¶ 20.

21       **Defendants' Response:** Defendants object to Plaintiff's Statement of Fact  
 22 No. 23 as irrelevant. ER 402. Whether or not Defendants acted with discriminatory  
 23 or retaliatory intent is irrelevant in light of the judicial finding of probable cause.  
 24 See, *Devenpeck v. Alford*, 543 U.S. 146, 153, 125 S.Ct. 588 (2004). Defendants  
 25 do not dispute that Mr. Spencer had new legal counsel in the underlying civil case  
 26 as of January 5, 2018 or that Judge Clarke took it

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1 upon himself to call someone in Missoula County. Part of Plaintiff's Statement of  
 2 Fact No. 23 is directed at Casey Evans, who is not an answering Defendant.  
 3 Defendants do dispute that they knew or should have known that Mr. Spencer was  
 4 represented by new counsel before January 5, 2018. *See* ECF 0028-8 at Bate Stamp  
 5 000127. This disputed fact is not material to the Court's determination regarding  
 6 Defendants' Motion for Summary Judgment.

7  
 8  
 9  
 10       **24. Plaintiff's Fact #24:** #41 - Defendants did not have the referenced  
      memorandum until after unlawfully having Plaintiff Spencer arrested, and it was  
      only given to Defendants under extreme duress. ECF No. 33; ECF No. 1-1; ECF  
      No. 28, ¶ 26. It has been objectively proven that Mr. Kandratowicz did mislead  
      the Spencers. ECF No. 33; ECF No. 1-1; ECF No. 34.

11  
 12       **Defendants' Response:** Defendants object to Plaintiff's Statement of Fact  
      No. 24 as irrelevant. ER 402. Defendants do not dispute that they did not possess  
      the referenced memorandum until after Mr. Spencer's arrest or that the  
      memorandum reflects that Mr. Kandratowicz mislead the Spencers. Defendants  
      dispute that Mr. Spencer's arrest was unlawful, as it was based upon probable  
      cause as determined by the Court. *See* ECF 0026 at 6-18; ECF 0028, ¶ 10, 16.

13  
 14       **25. Plaintiff's Fact #25:** #42, #43 - Plaintiff has no discovery relating  
      to Defendant Lebsock's relevant and pertinent investigation files, or his  
      communication with any person(s) in Missoula County. This is again an issue of  
      facts being stated and presented in a one-sided and incomplete fashion, with  
      Defendants possessing them and only stating a portion, and with Plaintiff Spencer  
      not having any of the related information; thus, there is need for relief under FRCP  
      56(d). The focus on the debit card, which was merely evidence of doing a lawful  
      act – sending a fax, is evidence of Defendants

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1 unreasonable, and failed investigation that did nothing but violate the  
 2 constitutional rights of Plaintiff Spencer, and fail to pursue the actual perpetrator  
 3 until after Defendants' wrongdoing exposed by Plaintiff's counsel on January 12,  
 4 2018, after notice of Plaintiff Spencer's arrest on the night of January 11, 2018.

5                   **Defendants' Response:** Defendants object to Plaintiff's Statement of Fact  
 6 No. 25 as irrelevant. ER 402. Whether or not Defendants acted with discriminatory  
 7 or retaliatory intent is irrelevant in light of the judicial finding of probable cause.  
 8

9 See, *Devenpeck v. Alford*, 543 U.S. 146, 153, 125 S.Ct. 588 (2004). Defendants  
 10 do not dispute that they have not provided discovery responses to Mr. Spencer.

11 Defendants dispute that Plaintiff is not in possession of the pertinent investigation  
 12 files. See ECF 28-1 through 28-24. Defendants dispute that Mr. Spencer's  
 13 constitutional rights were violated and that the debit card transaction was "merely  
 14 evidence of doing a lawful act." See ECF 0026 at 6-18; ECF 0028, ¶ 16. For the  
 15 reasons set forth in Defendants' response to Plaintiff's FRCP 56(d) motion,  
 16 Defendants dispute Plaintiff's claimed need for such discovery.

17                   **26. Plaintiff's Fact #26:** #44, #45 - Defendants fail to identify the  
 18 "someone" that informed Defendant Lebsack that Plaintiff Spencer had been  
 19 released, and the employment of the person is even presented in a vague manner  
 20 as being "either" the Missoula County Jail or the Missoula County Police  
 21 Department. Plaintiff Spencer is entitled to discovery into this/these contacts with  
 22 persons in Missoula, Montana. Plaintiff Spencer is also entitled to discovery into  
 23 the contact and communication between Defendant Lebsack and Spokane County  
 24 Superior Court Judge Harold Clarke. Defendants apparently know the business of  
 25 Judge Clarke, with Defendants relying on "*Judge Clarke then contacted an*  
 26 *individual . . .*" Defendant Lebsack's claimed "belief" at this point is contradicted  
 27 by information he had in his possession, but he

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either unreasonably or intentionally elected to ignore. Defendant Lebsock knew, or should have known if acting reasonably and without malice, that Plaintiff Spencer should not have been arrested, taken into custody, and detained in jail. ECF No. 33; ECF No. 1-1; ECF No. 34.

**Defendants' Response:** Defendants object to Plaintiff's Statement of Fact No. 26 as irrelevant. ER 402. Whether or not Defendants acted with discriminatory or retaliatory intent is irrelevant in light of the judicial finding of probable cause. See, *Devenpeck v. Alford*, 543 U.S. 146, 153, 125 S.Ct. 588 (2004). Defendants do not dispute that they do not identify the "someone" mentioned in Plaintiff's Statement of Fact No. 26. Defendants dispute that discovery regarding this contact would negate their arguments in favor of Summary Judgment. See Defendants' Reply Memorandum in Support of Summary Judgment. Defendants dispute that they know, or claim to know, the business of Judge Clarke. See ECF 0028, ¶ 20. Defendants dispute that Defendant Lebsock's acted with malice, or had a belief that was contradictory, or that he unreasonably or intentionally ignored information in his possession. See ECF 0026 at 6-18; ECF 0028, ¶ 16. This disputed fact is not material to the Court's determination regarding Defendants' Motion for Summary Judgment.

**27. Plaintiff's Fact #27:** #46 - Defendants fail to acknowledge that it was not until after legal counsel for Plaintiff Spencer exposed their wrongdoing that they finally initiated any effort to investigate Mr. Kandratowicz. ECF No. 33; ECF No. 1-1; ECF No. 34. By Defendants' own admissions they treated Mr. Kandratowicz in a disparate manner, to the

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1 unlawful discrimination of Plaintiff Spencer. Phone calls and polite house visits  
 2 are far from the extreme measures taken to arrest Plaintiff Spencer in the middle  
 3 of the night, especially when among the false pretext for the arrest was an apparent  
 4 concern about evidence being destroyed or tampered with. The lack of concern  
 5 about Mr. Kandratowicz destroying or tampering with evidence is telling, and the  
 6 effort, or lack thereof, to contact Mr. Kandratowicz shows Defendants' malice,  
 7 and failure to act reasonably or lawfully with regard to Plaintiff Spencer. *Id.*

8                   **Defendants' Response:** Defendants object to Plaintiff's Statement of Fact  
 9 No. 27 as irrelevant. ER 402. Whether or not Defendants acted with discriminatory  
 10 or retaliatory intent is irrelevant in light of the judicial finding of probable cause.

11 See, *Devenpeck v. Alford*, 543 U.S. 146, 153, 125 S.Ct. 588 (2004). Defendants  
 12 dispute that they only began to investigate Mr. Kandratowicz after their  
 13 "wrongdoing" was exposed. See ECF 0026 at 6-18; ECF 0028, ¶ 16. Defendants  
 14 dispute that they engaged in any wrongdoing or that they acted unreasonably or  
 15 unlawfully with regards to Mr. Spencer. *Id.* This disputed fact is not material to  
 16 the Court's determination regarding Defendants' Motion for Summary Judgment.  
 17

20                  28. **Plaintiff's Fact #28:** #47 - Spokane County Superior Court Judge  
 21 Maryann Moreno does not mention anything about this contact in chambers with  
 22 Defendant Lebsock when presented with a Motion to Disqualify, which she denied  
 23 on February 2, 2018, without ever informing the Spencers of this contact and her  
 24 commentary to Defendant Lebsock about "weird" behavior by party litigants, the  
 25 Spencers, in a case she was presiding over, and continued to preside over. ECF  
 26 No. 34-10. These statements are also hearsay, and Plaintiff Spencer has had no  
 27 opportunity to conduct and complete any related discovery. What should have  
 28 been "weird" to all involved, and with notice of the fact, was that the attorney of  
 29 record, Mr. Kandratowicz, for the Spencers did not appear in court on November  
 30, 2017, for the show case hearing relating to the subject forged order that Mr.  
 31 Kandratowicz forged. Defendants assert they did

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1 not know Plaintiff Spencer was an attorney prior to January 12, 2018 – to include  
 2 the searches and arrest of Plaintiff Spencer. This actually further undermines the  
 3 claim that they were acting reasonably when targeting a client (Plaintiff Spencer),  
 4 rather than the attorney that prepared, presented and secured the subject forged  
 5 court order – with the attorney's (Kandratowicz) information listed right on the  
 document.

6                   **Defendants' Response:** Defendants object to Plaintiff's Statement of Fact  
 7 No. 28 as irrelevant. ER 402. Whether or not Defendants acted with discriminatory  
 8 or retaliatory intent is irrelevant in light of the judicial finding of probable cause.  
 9 See, *Devenpeck v. Alford*, 543 U.S. 146, 153, 125 S.Ct. 588 (2004). Defendants  
 10 do not dispute that Judge Moreno failed to mention the contact with Det. Lebsack  
 11 in the hearing held on February 2, 2018 or that Mr. Kandratowicz did not appear  
 12 in court on behalf of the Spencers on November 30, 2017. Defendants dispute that  
 13 the fact that they were aware that Mr. Spencer was an attorney undermines their  
 14 claim that the investigation was reasonable. *See* ECF 0028, ¶ 21. This disputed  
 15 fact is not material to the Court's determination regarding Defendants' Motion for  
 16 Summary Judgment.

23                   **29. Plaintiff's Fact #29:** #49 - The referenced statements allegedly  
 24 made by Mr. Datsopoulos and Gwen Spencer are hearsay, and not admissible. FRE  
 25 801, 802. Any interaction with Ms. Spencer was with her under extreme duress  
 26 because Plaintiff Spencer had been arrested at night from his home and held in  
 27 jail, and with him having done absolutely nothing satisfying even one element of  
 28 a criminal charge. The Spencers have not had any reason to work with Defendants  
 29 because Defendants are not to be trusted in relation to any of the facts at issue here,  
 and have wantonly violated Plaintiff Spencer's constitutional rights, and nothing  
 has been shown that Defendants would not do it

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1 again if given the chance. The Spencers have provided to Defendants, by way of  
 2 the public record available to all Defendants, a variety of information that actually  
 3 confirms that Mr. Kandratowicz committed crimes beyond those he was charged  
 4 with; yet, Defendants apparently did nothing, and have done nothing, with that  
 5 inculpatory evidence. ECF No. 33; ECF No. 1-1; ECF No. 34. This further  
 6 confirms the unlawful and unconstitutional conduct by Defendants. The effort to  
 smear the Spencers further in this regard is egregious and shameful, and disregards  
 plain facts known to Defendants that they have failed to appropriately act upon.

7                   **Defendants' Response:** Defendants object to Plaintiff's Statement of Fact

8 No. 29 as irrelevant. ER 402. Whether or not Defendants acted with discriminatory  
 9 or retaliatory intent is irrelevant in light of the judicial finding of probable cause.  
 10

11 See, *Devenpeck v. Alford*, 543 U.S. 146, 153, 125 S.Ct. 588 (2004). Defendants  
 12 dispute that Mr. Spencer was held in jail without evidence of satisfying an element  
 13 of a criminal charge and that they violated Mr. Spencer's constitutional rights. See  
 14 ECF 0026 at 14; ECF 0028, ¶ 16. This disputed fact is not material to the Court's  
 15 determination regarding Defendants' Motion for Summary Judgment.

16                  30. **Plaintiff's Fact #30:** #50 - As noted previously, Defendants spin the  
 17 factual chronology by referring to facts in a timeline as though they knew things  
 18 earlier than they actually did, and using this twisted chronology in a self-serving  
 19 and misleading manner to provide a "hind-sight" basis for their unconstitutional  
 20 and unlawful conduct. Much of the information outlined by Defendants was  
 21 learned on January 16, 2018, or later, after Plaintiff Spencer was unlawfully  
 22 arrested and his property unlawfully searched. Defendants should not be allowed  
 23 to revise history to fit their contrived, self-serving narrative. ECF No. 33; ECF No.  
 24 1-1; ECF No. 34.

25                   **Defendants' Response:** Defendants object to Plaintiff's Statement of Fact

26 No. 30 as irrelevant. ER 402. Whether or not

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1 Defendants acted with discriminatory or retaliatory intent is irrelevant in light of  
 2 the judicial finding of probable cause. See, *Devenpeck v. Alford*, 543 U.S. 146,  
 3 153, 125 S.Ct. 588 (2004). Defendants dispute Plaintiff's contention that the  
 4 chronology of Det. Lebsock's Declaration is self-serving and misleading in order  
 5 to provide basis for Defendants' conduct and that their conduct was  
 6 unconstitutional and unlawful. *See* ECF 0028, ¶ 26.

10       **31. Plaintiff's Fact #31:** #51 - Defendants were aware of Plaintiff  
 11 Spencer's counsel representing him prior to January 16, 2019. ECF No. 33; ECF  
 12 No. 1-1. Discovery into this point may show further the response of Defendants to  
 13 contact from Plaintiff Spencer's legal counsel, when Defendants were contacted  
 14 on January 12, 2018. ECF No. 1-1. Defendant Lebsock knew of the representation  
 15 as of December 28, 2017. Id. Defendants all should have known of the  
 16 representation as of January 3, 2018. ECF No. 34-3. As is apparent from the  
 17 present litigation and the record herein, the comments to Defendant Lebsock by  
 18 Plaintiff Spencer's counsel were not "threats" because unlawful and  
 19 unconstitutional conduct occurred to the injury of Plaintiff Spencer and claims  
 against the Defendants here are fully warranted to achieve justice.

20       **Defendants' Response:** Defendants object to Plaintiff's Statement of Fact  
 21 No. 31 as irrelevant. ER 402. Defendants dispute that Det. Lebsock was aware that  
 22 the Spencers had new legal counsel as of January 5, 2018 and that their conduct  
 23 was unconstitutional and injured Mr. Spencer. *See* ECF 0026; ECF 0028, ¶ 16;  
 24 ECF 0028-8 at Bate Stamp 000127. Defendants dispute that the statement by Mr.  
 25 Spencer's counsel was not a threat. *See* ECF 0028, ¶ 29. This disputed fact is not  
 26  
 27

1 material to the Court's determination regarding Defendants' Motion for Summary  
 2 Judgment.  
 3

4       **32. Plaintiff's Fact #32:** #52, #53 - Mere, polite knocks on the door and  
 5 a few phone calls during business hours is a far cry from a team of law enforcement  
 6 banging on Plaintiff Spencer's door in the middle of the night and forcefully taking  
 7 him into custody and placing him in a jail cell for several days, and having him  
 8 housed with actual criminals despite being completely innocent and there being  
 9 no probable cause. Defendant Lebsack's plain and obvious disparate conduct with  
 10 regard to Mr. Kandratowicz is plain evidence of his unreasonable and malicious  
 effort to cause harm to Plaintiff Spencer for unlawful purposes, and in  
 contravention of Plaintiff Spencer's civil rights.

11           **Defendants' Response:** Defendants object to Plaintiff's Statement of Fact  
 12  
 13 No. 32 as irrelevant. ER 402. Whether or not Defendants acted with discriminatory  
 14 or retaliatory intent is irrelevant in light of the judicial finding of probable cause.  
 15  
 16 See, *Devenpeck v. Alford*, 543 U.S. 146, 153, 125 S.Ct. 588 (2004). Defendants  
 17 dispute that they acted unreasonably, unlawfully, maliciously or without probable  
 18 cause towards Mr. Spencer or that they disparately treated Mr. Kandratowicz. See  
 19 ECF 0026 at 6-18; ECF 0028, ¶ 16, 28-32. This disputed fact is not material to the  
 20  
 21 Court's determination regarding Defendants' Motion for Summary Judgment.  
 22

23       **33. Plaintiff's Fact #33:** #54 - Plaintiff is entitled to discovery of the  
 24 material Defendants possess, and under FRCP 56(d) the present motion should be  
 25 continued, if it is not going to be denied on the record before the Court, until after  
 26 Plaintiff Spencer gains possession of discovery and production and has had a fair  
 27 and sufficient opportunity to make use of it in response to Defendants' dispositive  
 motions.  
 28

1                   **Defendants Response:** Defendants object to Plaintiff's Statement of Fact  
 2 No. 33 as irrelevant. ER 402. Defendants dispute that Mr. Spencer is entitled to  
 3 discovery under FRCP 56(d) before this Court issues a decision regarding the  
 4 pending Summary Judgment Motion. *See* Defendants Reply Memorandum in  
 5 Support of Summary Judgment. This disputed fact is not material to the Court's  
 6 determination regarding Defendants' Motion for Summary Judgment.  
 7

8                   **34. Plaintiff's Fact #34:** #55 - Upon scrutiny, the Affidavit of Facts at  
 9 Exhibit J (ECF No. 28-10) to Defendant Lebsock's Declaration is further evidence  
 10 of his unreasonably conduct and malicious effort to injure and cause harm to  
 11 Plaintiff Spencer and Ms. Spencer. ECF No. 33; ECF No. 1-1; ECF No. 34.

12                   **Defendants' Response:** Defendants object to Plaintiff's Statement of Fact  
 13 No. 34 as irrelevant. ER 402. Whether or not Defendants acted with discriminatory  
 14 or retaliatory intent is irrelevant in light of the judicial finding of probable cause.  
 15 See, *Devenpeck v. Alford*, 543 U.S. 146, 153, 125 S.Ct. 588 (2004). Defendants  
 16 dispute Plaintiff's Statement of Fact No. 34. *See* ECF 0028, ¶ 16; ECF 0028-10.  
 17 This disputed fact is not material to the Court's determination regarding  
 18 Defendants' Motion for Summary Judgment.

19                   **35. Plaintiff's Fact #35:** #56 – Defendants admit that they knew the  
 20 Spencers presented credible and truthful information about the identity theft issue  
 21 and the unlawful attempt to gain access to their bank account. Plaintiff Spencer  
 22 and Ms. Spencer did not claim that there was an actual theft of money occurring  
 23 on the date the phone call was made and reported, and a careful reading of Plaintiff  
 24 Spencer's declaration given to Defendant City of

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1 Spokane (via SPD) shows the error and failure on the part of Defendants to read  
 2 carefully and properly process the information they received. ECF No. 28-4; ECF  
 3 No. 33; ECF No. 1-1. It is false for Defendants to say that Plaintiff Spencer's  
 4 declaration provided to SPD on October 23, 2017, claimed that the person on the  
 5 phone with STCU impersonating Ms. Spencer attempted to move the listed funds  
 6 on July 3, 2017. *Id.*

7                   **Defendants' Response:** Defendants object to Plaintiff's Statement of Fact  
 8 No. 35 as irrelevant. ER 402. Defendant's dispute that the facts contained in  
 9 Defendants' Statement of Material Facts, ¶ 56 serves as an admission regarding  
 10 the Spencers' assertions pertaining to the identity theft complaint. Defendants  
 11 dispute that Mr. and Ms. Spencer did not claim that there was an actual theft of  
 12 money occurring on the date the phone call was made and reported. *See* ECF 0028-  
 13 4. This disputed fact is not material to the Court's determination regarding  
 14 Defendants' Motion for Summary Judgment.

15                 36.    **Plaintiff's Fact #36:** #59 – Leads to investigate relating to the crime  
 16 involving the call on July 3, 2017, could have been developed if Defendants had  
 17 properly and reasonably acted upon the report provided by Plaintiff Spencer in  
 18 October of 2017. This is further evidence of discrimination of Plaintiff Spencer  
 19 because Defendants took no action consistent with ever treating Plaintiff Spencer  
 20 as a victim of crime. The Spencers were crime victims and Defendants knew it, or  
 21 should have known it if not acting unreasonably and with deliberate indifference.  
 22 ECF No. 33; ECF No. 1-1; ECF No. 34.

23                 **Defendants' Response:** Defendants object to Plaintiff's Statement of Fact  
 24 No. 36 as irrelevant. ER 402. Whether or not Defendants acted with discriminatory  
 25 or retaliatory intent is irrelevant in light of the judicial finding of probable cause.

26  
 27  
 28  
 29  
 30

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1 See, *Devenpeck v. Alford*, 543 U.S. 146, 153, 125 S.Ct. 588 (2004). Defendants  
2 dispute Plaintiff's Statement of Fact No. 36. *See* ECF 0026 at 6-18; ECF 0028, ¶  
3 16. This disputed fact is not material to the Court's determination regarding  
4 Defendants' Motion for Summary Judgment.

5  
6 37. **Plaintiff's Fact #37:** #60 – In light of the state of information known  
7 to Defendants on February 22, 2018, the search warrant described by Defendant  
8 Lebsock was an unlawful and unconstitutional search in violation of Plaintiff  
9 Spencer's civil rights. Defendant Lebsock's recounting of the facts relating to his  
10 review of account information, and relating to the date of July 3, 2017, and as  
11 compared to the declaration given to law enforcement by Plaintiff Spencer in  
12 October of 2017 is pure nonsense. ECF No. 33; ECF No. 1-1; ECF No. 34; ECF  
13 No. 28-4. Defendant Lebsock's account is so facially deficient it is intentionally  
14 misleading, false, corrupt and motivated by malice and discriminatory bias; at best,  
it is inept, unreasonable and reckless.

15  
16 **Defendants' Response:** Defendants object to Plaintiff's Statement of Fact  
17 No. 37 as irrelevant. ER 402. Whether or not Defendants acted with discriminatory  
18 or retaliatory intent is irrelevant in light of the judicial finding of probable cause.  
19  
20 See, *Devenpeck v. Alford*, 543 U.S. 146, 153, 125 S.Ct. 588 (2004). Defendants  
21 dispute Plaintiff's Statement of Fact No. 37. *See* ECF 0028, ¶ 16; ECF 0028-8.  
22 This disputed fact is not material to the Court's determination regarding  
23 Defendants' Motion for Summary Judgment.

24  
25 38. **Plaintiff's Fact #38:** #61, #63 – Defendants now admit that  
26 Defendant Lebsock's reference to the “*statement of facts*” was false in his  
27 Affidavit of Facts. The blatant falsity, and now convenient admission as a mere  
28 “oops,” is evidence of Defendants unreasonable, unlawful and unconstitutional  
29 conduct causing injury and harm to Plaintiff

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1 Spencer. Defendant Lebsock is unreasonably and maliciously in error in his  
 2 description of his own editorialized version of the “facts” contained in his so-  
 3 called Affidavit of Facts. Defendants were so clouded by their effort to  
 4 discriminate against Plaintiff Spencer that they lost a grip on the facts they knew  
 or reasonably should have known.

5           **Defendants’ Response:** Defendants object to Plaintiff’s Statement of Fact  
 6 No. 38 as irrelevant. ER 402. Whether or not Defendants acted with discriminatory  
 7 or retaliatory intent is irrelevant in light of the judicial finding of probable cause.  
 8 See, *Devenpeck v. Alford*, 543 U.S. 146, 153, 125 S.Ct. 588 (2004). Defendants  
 9 do not dispute that Defendants’ Statement of Material Facts, ¶ 69 reflect self-  
 10 admitted errors by Det. Lebsock. Defendants dispute that they acted unreasonable,  
 11 malicious, unlawful, unconstitutional or discriminatory towards Mr. Spencer. See  
 12 ECF 0026 at 6-18; 0028, ¶ 16, 67-70; ECF 0028-8.  
 13

14           **39. Plaintiff’s Fact #39:** #65 – Defendants appear to have illegally  
 15 made use of attorney-client communications as party of their investigation and  
 16 prosecution, which were unlawfully obtained in violation of Plaintiff Spencer’s  
 17 civil rights.

18           **Defendants’ Response:** Defendants object to Plaintiff’s Statement of Fact  
 19 No. 39 as irrelevant. ER 402. Defendants dispute that they have made illegal use  
 20 of the cited materials contained in Plaintiff’s Statement of Fact No. 39. See ECF  
 21 0028, ¶ 56; ECF 0028-8. This disputed fact is not material to the Court’s  
 22 determination regarding Defendants’ Motion for Summary Judgment.  
 23

1           **40. Plaintiff's Fact #40:** #66, #67 – Defendants admit that as of April  
 2 23, 2018, they had more obvious evidence inculpating Mr. Kandratowicz and  
 3 exculpating Plaintiff Spencer, yet Defendant Lebsock “doubled-down” on his  
 4 wrongdoing and unlawful, dishonest behavior, and as part of his cover-up and  
 5 “fix,” by executing an Affidavit of Facts on May 4, 2018, that was an obvious  
 6 attempt to save himself from liability to Plaintiff Spencer. Defendant Lebsock’s  
 7 Affidavit of Facts dated May 4, 2018, inculpates him as being liable under the  
 8 claims alleged in the present case by Plaintiff Spencer. ECF No. 33; ECF No. 1-1.

9           **Defendants’ Response:** Defendants object to Plaintiff’s Statement of Fact  
 10 No. 40 as irrelevant. ER 402. Whether or not Defendants acted with discriminatory  
 11 or retaliatory intent is irrelevant in light of the judicial finding of probable cause.  
 12 See, *Devenpeck v. Alford*, 543 U.S. 146, 153, 125 S.Ct. 588 (2004). Defendants  
 13 dispute Plaintiff’s Statement of Fact No. 40. See ECF 0028-8. This disputed fact  
 14 is not material to the Court’s determination regarding Defendants’ Motion for  
 15 Summary Judgment.

16           **41. Plaintiff's Fact #41:** #69 – Defendants admit Defendant Lebsock  
 17 “made several errors,” despite his experience as a “Major Crimes” detective and  
 18 many, many years of experience as a detective (apparently since 1999). It is far  
 19 too convenient, with all of the facts from the outset serving-up Mr. Kandratowicz  
 20 as the perpetrator of the crimes alleged against Plaintiff Spencer, for Defendant  
 21 Lebsock to have made so many so-called “errors.” Defendants’ “errors” were  
 22 absolutely material to the investigation and prosecution of Plaintiff Spencer, and  
 23 they were so egregious as to be, at best, unreasonable and reckless. A pattern of  
 24 these so-called “errors” led to the unlawful and unconstitutional searches and  
 25 arrest of Plaintiff Spencer in violation of his civil rights and to his harm and injury.  
 26 The admission that there were “errors” is far too convenient, and these so-called  
 27 “errors” support the inference that Defendants violated Plaintiff Spencer’s civil  
 28 rights. ECF No. 33; ECF No. 1-1; ECF No. 34.

**Defendants' Response:** Defendants object to Plaintiff's Statement of Fact No. 41 as irrelevant. ER 402. Whether or not Defendants acted with discriminatory or retaliatory intent is irrelevant in light of the judicial finding of probable cause. See, *Devenpeck v. Alford*, 543 U.S. 146, 153, 125 S.Ct. 588 (2004). Defendants do not dispute that Defendants' Statement of Material Facts, ¶ 69 reflect self-admitted errors by Det. Lebsock. Defendants dispute that these errors were material to the investigation and that these errors are not evidence of unreasonable, unlawful or unconstitutional conduct. ECF 0028, ¶ 67-70. This disputed fact is not material to the Court's determination regarding Defendants' Motion for Summary Judgment.

DATED this 17<sup>th</sup> day of September, 2019.

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## **CERTIFICATE OF SERVICE**

I hereby certify that on September 17, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following:

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